

Appl. No. 10/016,952

Reply to Office Action of July 14, 2004

**REMARKS/ARGUMENTS**

Claims 1 - 7, 15 - 21, 32 and 34 are presented for the Examiner's consideration. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1 and 15 have been amended for consistency with the previous amendment made to the specification filed on June 14<sup>th</sup>, 2004, and identified as Amendment - 2<sup>nd</sup>. The recited top flange is reference numeral 35 as illustrated in amended Figure 3, previously submitted. The current amendment changes the claims from using the terms "cover sidewall" and "cover flange" to "top side wall" and "top flange" for consistency with the terminology of the specification. Additionally, claim 15 has been amended to recite that the top flange extends outwardly from the top side wall as illustrated in Figure 3. This clarifies how the top flange is connected to the top side wall. Claims 23 - 31 have been canceled as being drawn to a non-elected invention in response to the restriction election made in the reply dated July 16, 2003.

Claims 1 - 6, 8, 9, 15 - 21, 32, and 34 stand rejected under 35 U.S.C. as anticipated by EP 1 048 257 A2 filed by Molzberger et al. The Applicants note for the Examiner's convenience that an English translation of DE 199 19 637 C2 was submitted with an IDS dated February 27, 2003. As such, the Applicants will refer to the English translation of the priority document for EP 1 048 257 with regard to the pending rejection.

Referring to Figures 7 and 8, and pages 8 - 9 of the English translation, Molzberger discloses a dispenser for moist toilet-paper rolls having a box-like housing 2 with a lid 8, fastened in a pivoting manner on the housing 2. The lid has a vertical downwardly extending peripheral retaining section 31. A semicircular hinge 33 for opening the lid is fitted on the downwardly extending retaining section 31 of one side section 32 of the lid 8. The hinge has an inwardly directed end 34, which is curved at right angles, for engaging the retaining section 31 of the lid and is firmly connected thereto. Formed on the hinge 33, at a distance from the curved end 34, is an inwardly projecting hook 35, which, when the lid is placed in a closed position, engages behind the retaining section 31 of the lid 8 and the free end of the vertical bearing section 29 of the dispenser housing. In order to release the connection, all that is required is for the free end of the hinge 33 to be bent somewhat forward, as a result of which the hook 35 disengages from the free end of the bearing section 29 of the dispenser housing and thus frees the lid. The above describes a latch mechanism for holding the lid closed and for opening the lid.

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Molzberger then goes on to state on page 9 of the translation: "In order for the lid 8 to be connected **in a captive fashion** to the dispenser housing 2, it is connected in a movable manner, along retaining section 31 which is formed on the side section 36, which is located opposite the side section 32, to the bottom border 37 of the bearing section 29 formed on the sidewall 7 of the dispenser housing 2." (Emphasis added.) Thus, Molzberger describes a method of attaching a pivoting lid to a container using a living hinge on one side and a lock mechanism on the opposing side to hold the lid shut. In contrast, the Applicants cover snaps onto the cartridge and it is completely removable from the cartridge for refilling with a fresh roll. The Applicants do not use a living hinge and a lock mechanism as described in Molzberger.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). See MPEP §2131. The Applicants respectfully traverse the anticipation rejection since Molzberger fails to disclose a cover comprising a top, a top side wall, and a top flange as claimed by the Applicants. As shown in Figures 2 and 7 of Molzberger, the lid 8 has a downwardly extending retaining section 31 equivalent to the claimed top side wall, but does not have an element corresponding to the claimed top flange 35 as shown in Figure 3 of the Applicants' specification. Furthermore, the lid 8 of Molzberger is not removably self-fastenable as claimed by the Applicants. The lid 8 of Molzberger, as the translation clearly states, is connected **in a captive fashion** to the dispensing housing 2. As such, for at least these reasons, the above pending anticipation rejection has been overcome.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being obvious over Molzberger in view of U.S. 5,699,912 issued to Ishikawa. Ishikawa discloses a container for wetted tissues having a spring-open lid for extracting the tissues through an opening beneath the lid.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. See MPEP § 2143 citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

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The Applicants respectfully traverse the obvious rejection since the proposed combination fails to teach or suggest all of the Applicants' claim limitations. The Examiner has cited Ishikawa for providing a double seal as recited in claim 7. However, the proposed combination fails to cure the deficiency of Molzberger with regard to either a top flange or a removably self-fastenable cover. As such, a *prima facie* case of obviousness has not been established for claim 7.

Since all of the rejections to the independent claims have been overcome, the Applicants believe that the withdrawn claims, which are dependent on either claim 1 or claim 15, are also in a condition for allowance. For the reasons stated above, it is respectfully submitted that the pending and withdrawn claims are in a condition for allowance and such action is requested by the Applicants. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at: (920) 721-7760.

Respectfully submitted,

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